In the

Supreme Court of the United States

OCTOBER TERM, 1965

No.....

DR. HUGO FIELDSMITH,

Petitioner,

v.

TEXAS STATE BOARD OF DENTAL EXAMINERS,

Respondent.

Petition for Writ of Certiorari to the Court of Civil Appeals for the Fifth Supreme Judicial District of Texas at Dallas, Texas

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To the Honorable Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The Petitioner prays that a writ of certiorari be issued to review a judgment and order, entered on January 29, 1965, overruling petitioner's motion for rehearing of a judgment entered on December 18, 1964 by the Court of Civil Appeals for the Fifth Supreme Judicial District of Texas at Dallas, Texas.

CITATIONS TO OPINIONS BELOW

The opinion of the Court of Civil Appeals is reported at 386 S.W. 2d 305 and is printed in Appendix B hereto. The order of the Respondent Board is printed in Appendix A hereto.

JURISDICTION

The judgment of the Court of Civil Appeals was entered on December 18, 1964 (R. 377). Rehearing was overruled on January 29, 1965 (R. 378). Application to the Supreme Court of Texas for writ of error to the Court of Civil Appeals was refused on April 28, 1965 (R. 436). Rehearing of such application for writ of error was refused on June 2, 1965 (R. 436). Order extending time to file petition for writ of certiorari to and including October 15, 1965 was made and entered on August 27, 1965. The jurisdiction of this Court is invoked under 28 U. S. C. 1257(3). Hence the Court of Civil Appeals is the highest court of the State of Texas in which a decision could be had within the meaning of 28 U. S. C. 1257 as construed by this Honorable Court in *Michigan-Wisconsin Pipe Line Co. v. Calvert* (1954) U. S. Tex., 347 U. S. 157, Rehearing denied; *Panhandle Eastern Pipe Line Co. v. Calvert* (1954), 347 U. S. 931; *Michigan-Wisconsin Pipe Line Co. v. Calvert* (1954) 347 U. S. 931.

That petitioner was deprived of due process of law was raised, considered, discussed and disposed of in the course of the proceedings in the state courts as follows: in the trial court—Petitioner's pleading R. 31, par. 5; finding of fact in trial court's judgment R. 39, penultimate par.; in the Court of

Civil Appeals—Appellee's Brief R. 347 Third Counter Point; opinion of the Court of Civil Appeals R. 372, par. 2, R. 373 pars. 2 and 3; R. 374, par. 3; in the Supreme Court of Texas—Application for Writ of Error R. 385, 387 Third Point of Error; R. 388 et seq. Statement, Argument and Authorities; Petitioner's Motion for Rehearing of Application of Writ of Error R. 425, 427 Third Point of Error R. 428 et seq. Statement, Argument and Authorities.

QUESTIONS PRESENTED

(1) Whether the state statute pursuant to which Petitioner appealed from the order of Respondent Board cancelling his license to practice dentistry, construed by state appellate court decisions and Respondent Board to limit the scope of judicial inquiry on appeal to whether such order of Respondent Board is supported by substantial evidence, deprived Petitioner of due process of law.

(2) Whether the proceedings had before the Respondent Board which consisted of a hearing and an order made pursuant to such hearing cancelling Petitioner's license to practice dentistry, at which hearing all witnesses who testified to the occurrence of acts of conduct which constituted the basis of said order were business acquaintances of a member of Respondent Board and had close daily contact with him in their regular employment; were first examined by said Board member and found in need of dental treatment; were then "selected", hired and furnished State's money to repair to Petitioner for dental treatment to obtain information to be

given in testimony at such hearing to cancel Petitioner's license to practice dentistry; with said Respondent Board member participating in said hearing and making of said order with the other five members of Respondent Board and the decision and judgment of the Court of Civil Appeals sustaining and affirming such action and order of Respondent Board, deprived Petitioner of due process of law.

STATUTES INVOLVED

The statutory provisions involved are Articles 4543, 4544, 4544a, 4545, 4545a, 4546, 4547, 4548, 4549, 4549a, 4550, 4550a, 4551, 4551a, 4551b, 4551c, 4551d, 4551e, 4551f, 4551g and 4590c of Vernon's Texas Civil Statutes and Articles 747, 748, 749, 750, 751, 751a, 752, 752a, 752b, 752c, 753, 754, 754a, 754b and 754c of Vernon's Texas Penal Code. Same are furnished in separate pamphlet identified as Appendix D.

STATEMENT

Pursuant to hearing had under authority of Article 4549 of Vernon's Texas Civil Statutes and upon the complaint of Tom A. Garner, one of its employees, which was filed as Complaint No. 1963-2 (R. 16-20), the Respondent Board made and entered an order cancelling the license of Petitioner to practice dentistry (Appendix A), from which order, Petitioner, pursuant to said article appealed to a state district court of Dallas County, Texas, which appeal resulted in a judgment setting aside said order on the grounds that said order was not supported by substantial evidence and that Petitioner was denied due process of law by Respond-

ent Board. (R. 39-40). On appeal by Respondent to the Court of Civil Appeals, the trial court's judgment was reversed and the actions and order of Respondent Board were sustained and affirmed (Appendix B and Appendix C). Petitioner's Application for Writ of Error was refused by the Supreme Court of Texas (R. 436). At such hearing before Respondent Board all witnesses who testified to occurrence of acts of conduct which constituted the basis of the order cancelling Petitioner's license to practice dentistry were business acquaintances of a member of Respondent Board and had close daily contact with him in their regular employment; were first examined by said Respondent Board member and found in need of dental treatment; were then "selected", hired and furnished State's money to repair to Petitioner for dental treatment to obtain information to be given in testimony at such hearing to cancel Petitioner's license to practice dentistry and said Respondent Board member participated in said hearing and the making of said order with the other five members of Respondent.

REASONS FOR GRANTING THE WRIT

It is of longest tradition under our societal system that any method of law which has as its objective the imposition of a sanction upon one of its members, must be implemented with fundamental fairness and that such must appear to any reasonable minded objective observer to have been done. Since the Earth's people are in process of conceptualizing, establishing and implementing an Earth wide total method of societal system of which the foundational concept inevitably will be a more precise than ever before imple-

mentation of every method of law with fundamental fairness and that such appear to every reasonable minded objective observer, it is most important that this Court take jurisdiction of this litigation and in its decision of same, expound a rule of law in consonance with the above general principles so that all members of society everywhere can be made aware thereof and particularly members of society who implement methods or processes of law, such as judges, lawyers, administrative boards and their employees.

Under the circumscriptions of the scope of judicial inquiry on appeal, the Respondent's judgment and order, as a practical matter was an unappealable "death" penalty so far as Petitioner's right to earn a livelihood is concerned. Under the circumstances of the Board's handling of the proceedings to cancel Petitioner's license to practice dentistry, all annals of history provide no example of greater tyranny than such proceedings. No crime has ever been planned with greater malice aforethought and carried out in the same attitude.

The general principle stated in paragraph one above is the foundational basis of all laws with respect to the disqualification of judges, the method of law and decisions of the federal judicial system with respect to trial of attorney contemnors in judicial proceedings and this Court's decisions in such cases as *Tumey v. Ohio*, 273 U.S. 510, *In re Oliver*, 333 U.S. 257 and *In re Murchison*, 349 U.S. 133.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

RALPH GISMANT,
2007-A Greenville Avenue,
Dallas, Texas,

CURTIS E. HILL,
605 North Ervay,
Dallas 1, Texas,
Counsel for Petitioner.

I certify that a copy of the foregoing petition for writ of certiorari has been mailed, on the 14th day of October, A.D., 1965 to Honorable Pat Bailey, Assistant Attorney General of Texas, Box R, Capitol Station, Austin 11, Texas, and to Honorable Henry Wade, District Attorney of Dallas County, Sixth Floor, Records Building, Dallas 2, Texas.

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Curtis E. Hill

APPENDIX A

FINDINGS AND ORDERS OF THE BOARD

Docketed Complaint No. 1963-2

TEXAS STATE BOARD OF DENTAL EXAMINERS,

v.

DOCTOR HUGO FIELSCHMIDT,
(Also known as Doctor Hugo Fieldsmith)
1703½ Live Oak Street, 1617½ Elm Street
Dallas, Dallas County, Texas
Holder of Texas Dental License No. 3521
1963 Registration Certificate No. 318

Meeting of the Texas State Board of Dental Examiners,
San Antonio, Texas, Saturday, April 27, 1963,
at 11:00 A. M. O'Clock

On the 27th day of April, 1963, the Texas State Board of Dental Examiners being in meeting at the St. Anthony Hotel, San Antonio, Bexar County, Texas, such meeting being called for the purpose of hearing and considering the above numbered and entitled complaint, as well as for the transaction of other business, and the defendant, Doctor Hugo Fielschmidt, not being present in person nor being represented by counsel and a quorum and a majority of the membership of the Texas State Board of Dental Examiners being present, to-wit:

Doctor H. Arthur Zappe, President
Doctor Emmett R. Johnson, Vice President
Doctor R. T. Weber, Secretary-Treasurer
Doctor R. F. McCasland
Doctor S. H. Rabon
Doctor Jack R. Winston

And the President, having called said docketed complaint for hearing and the State having announced ready, the President ordered a plea of not guilty to be entered for the absent

defendant; the Board proceeded to hear all matters offered. At the conclusion of the evidence and testimony, the Board after consideration and deliberation on all of the evidence presented at that time did make the following unanimous findings to-wit:

1. That Doctor Hugo Fielschmidt (also known as Doctor Hugo Fieldsmith), in his dental offices at 1703½ Live Oak Street, and 1617½ Elm Street, both in Dallas, Dallas County, Texas, such premises being under his control, had as his dental patient one Charles McDowell, and the said Doctor Hugo Fielschmidt (also known as Doctor Hugo Fieldsmith), did permit Ruby Conners, a person not licensed to practice dentistry in Texas, to then and there practice dentistry by permitting the said Ruby Conners, on or about January 16, 1963, to put medicine in the jaw of the said Charles McDowell and treat the place where two teeth had been removed from the mouth of said Charles McDowell; by permitting the said Ruby Conners, on or about January 17, 1963, to drill on the teeth of the said Charles McDowell, and put in temporary fillings in the teeth of the said Charles McDowell; by permitting the said Ruby Conners, on or about January 19, 1963, to remove bone from the gum of the said Charles McDowell; by permitting the said Ruby Conners, on or about February 9, 1963, to remove the temporary fillings in the teeth of the said Charles McDowell and put permanent fillings in the teeth of the said Charles McDowell; by permitting the said Ruby Conners, on or about February 12, 1963, to drill on the teeth of the said Charles McDowell; by permitting the said Ruby Conners, on or about February 18, 1963, to clean the teeth of the said Charles McDowell, by permitting the said Ruby Conners, on or about February 25, 1963, to drill on the teeth of the said Charles McDowell and put in temporary fillings in the teeth of the said Charles McDowell; by permitting the said Ruby Conners, on or about March 4, 1963, to remove the temporary fillings from the teeth of the said Charles McDowell and put in permanent fillings in the teeth of the said Charles McDowell, and that the said Doctor Hugo Fielschmidt (also known as Doctor Hugo Fieldsmith), by

reason of the acts aforesaid, is guilty of violating Subsection (g) of the second portion of Article 4549, Vernon's Civil Statutes of Texas, as amended, as set out in this paragraph and in paragraph I of the Complaint and Docketed Complaint No. 1963-2.

2. That Doctor Hugo Fielschmidt (also known as Doctor Hugo Fieldsmith), in his dental offices at 1703½ Live Oak Street in Dallas, Dallas County, Texas, such premises being under his control, had as his dental patient, one Willie Buford, and the said Doctor Hugo Fielschmidt (also known as Doctor Hugo Fieldsmith) did permit Ruby Conners, a person not licensed to practice dentistry in Texas, to then and there practice dentistry by permitting the said Ruby Conners, on or about January 19, 1963, to make impressions of the front teeth of the said Willie Buford for the purpose of constructing a gold crown to be placed upon the upper front teeth of the said Willie Buford; by permitting the said Ruby Conners, on or about January 21, 1963, to fit and adjust the gold crown for the upper front teeth of the said Willie Buford, and cementing in the gold crown upon the upper front teeth of the said Willie Buford, and that the said Doctor Hugo Fielschmidt (also known as Doctor Hugo Fieldsmith), by reason of the acts aforesaid, is guilty of violating Subsection (g) of the second portion of Article 4549, Vernon's Civil Statutes of Texas, as amended, as set out in this paragraph and in paragraph II of the Complaint and Docketed Complaint No. 1963-2.

3. That Doctor Hugo Fielschmidt (also known as Doctor Hugo Fieldsmith), in his dental office at 1703½ Live Oak Street, Dallas, Dallas County, Texas, such premises being under his control, had as his dental patient one Marion Tuck, and the said Doctor Hugo Fielschmidt (also known as Doctor Hugo Fieldsmith), did permit Ruby Conners, a person not licensed to practice dentistry in Texas, to then and there practice dentistry by permitting the said Ruby Conners, on or about January 16, 1963, to make impressions of the gums of the mouth of the said Marion Tuck; by permitting the said Ruby Conners, on or about January 17,

1963, to fit and adjust the fixed bridge for the teeth of the said Marion Tuck, and that the said Doctor Hugo Fielschmidt (also known as Doctor Hugo Fieldsmith), by reason of the acts aforesaid, is guilty of violating Subsection (g) of the second portion of Article 4549, Vernon's Civil Statutes of Texas, as amended, as set out in this paragraph and in paragraph III of the Complaint and Docketed Complaint No. 1963-2.

4. That Doctor Hugo Fielschmidt (also known as Doctor Hugo Fieldsmith), in his dental offices at 1617½ Elm Street in Dallas, Dallas County, Texas, such premises being under his control, had as his dental patient one Wayne R. Youngblood, and the said Doctor Hugo Fielschmidt (also known as Doctor Hugo Fieldsmith), did permit Adolph Korngut, a person not licensed to practice dentistry in Texas, to then and there practice dentistry by permitting the said Adolph Korngut, about January 29, 1963, to fit and adjust a partial plate for the mouth of the said Wayne R. Youngblood; by permitting the said Adolph Korngut on or about January 30, 1963, to fit and adjust a partial plate in the mouth of the said Wayne R. Youngblood, and that the said Doctor Hugo Fielschmidt (also known as Doctor Hugo Fieldsmith) by reason of the acts aforesaid, is guilty of violating Subsection (g) of the second portion of Article 4549, Vernon's Civil Statutes of Texas, as amended, as set out in this paragraph and in paragraph IV of the Complaint and Docketed Complaint No. 1963-2.

5. That all statutory requirements to its jurisdiction have been met.

The Board finds that the facts brought out at such hearing justify and require the following orders, to-wit:

It is hereby ordered that Texas Dental License Number 3521 and 196 Registration Certificate Number 318 heretofore issued by the Texas State Board of Dental Examiners to Doctor Hugo Fielschmidt (also known as Doctor Hugo Fieldsmith), be and the same are hereby REVOKED AND CANCELLED on each of the counts contained in paragraphs

1, 2, 3, and 4 of the Complaint, Docketed Complaint, and of these Findings and Orders of the Board, and that the said Doctor Hugo Fielschmidt (also known as Doctor Hugo Fieldsmith) shall not hereafter practice dentistry in the State of Texas; *provided, however, should this Order of Revocation and Cancellation be suspended or set aside as provided by law, then such Order shall become effective upon the date such Order of the Texas State Board of Dental Examiners is finally adjudicated.*

The above findings and orders of the Texas State Board of Dental Examiners are ordered to be entered as the unanimous findings and orders of the Board, a quorum and majority of the members of such Board being present and participating in such hearing, deliberation and decision, and such findings and orders are made this the 27th day of April, 1963, in San Antonio, Bexar County, Texas.

The Secretary of the Board is hereby ordered to prepare the Board's findings and orders in appropriate form and submit same for signature to the members of the Board, and to mail a copy of same to the defendant at his last known address.

/s/ Doctor H. Arthur Zappe	/s/ Doctor R. F. McCasland
Doctor H. Arthur Zappe, *President*	Doctor R. F. McCasland
/s/ Dr. Emmett R. Johnson	/s/ Doctor S. H. Rabon
Doctor Emmett R. Johnson, *Vice President*	Doctor S. H. Rabon
/s/ Doctor R. T. Weber	/s/ Doctor Jack R. Winston
Doctor R. T. Weber, *Secretary-Treasurer*	Doctor Jack R. Winston

APPENDIX B

TEXAS STATE BOARD OF DENTAL EXAMINERS,
Appellant,

v.

DR. HUGO FIELDSMITH (Fieldschmidt),
Appellee.

No. 16433

Court of Civil Appeals of Texas.

Dallas.

Dec. 18, 1964.

Rehearing Denied Jan. 29, 1965.

Appeal by State Board of Dental Examiners from a judgment of the District Court, Dallas County, Owen Giles, J., setting aside the Board's order revoking the license of a dentist. The Court of Civil Appeals, Dixon, C. J., held that patients' testimony that the dentist had permitted two unlicensed employees to practice dentistry on several occasions constituted substantial evidence reasonably supporting the Board's order.

Reversed and rendered.

1. Physicians and Surgeons

Appeal to district court under dental statute must be tried in accordance with substantial evidence rule. Vernon's Ann. Civ. St. art. 4549.

2. Physicians and Surgeons

Whether there is substantial evidence to support State Board of Dental Examiners' order is question of law. Vernon's Ann. Civ. St. art. 4549.

3. Physicians and Surgeons

If there is substantial evidence introduced in district court to support Board of Dental Examiners' order, order must stand notwithstanding fact that evidence may be conflicting and district court cannot substitute its discretion for that of Board. Vernon's Ann. Civ. St. art. 4549.

4. Physicians and Surgeons

Trial court erred in substituting its discretion for statutory discretion of State Board of Dental Examiners which had revoked dentist's license for permitting two unlicensed employees to practice dentistry in view of court's statement indicating that court felt Board's order of cancellation was too severe and that otherwise order would have been sustained. Vernon's Ann. Civ. St. art. 4549.

5. Physicians and Surgeons

Board of Dental Examiner's order revoking dentist's license for permitting unlicensed employees to practice dentistry was supported by substantial evidence. Vernon's Ann. Civ. St. art. 4549.

6. Physicians and Surgeons

State Board of Dental Examiners is administrative agency and is charged with duty of aiding in enforcement of statutes regulating practice of dentistry and to that end it may hire investigators, make complaints and revoke dental license for any or more of causes set out in statute. Vernon's Ann. Civ. St. art. 4549.

7. Constitution Law Physicians and Surgeons

Member of State Board of Dentistry was not disqualified to participate in hearing to revoke dentist's license because member had aided in investigation leading to filing of complaint against dentist and dentist was not denied due process of law. Vernon's Ann. Civ. St. art. 4549.

Waggoner Carr, Atty. Gen., and Pat Bailey, Asst. Atty. Gen., Austin, for appellant.

Ralph Gismant, Dallas, for appellee.

DIXON, Chief Justice.

Texas State Board of Dental Examiners has appealed from a judgment of a district court setting aside the Board's order revoking the license of Dr. Hugo Fieldsmith to practice dentistry in the State of Texas.

Dr. Fieldsmith, appellee, was charged with violation of Section (g) of Article 4549, Vernon's Ann. Civ. St. in that he permitted an unlicensed employee named Ruby Conner to practice dentistry on several occasions on Charles McDowell, Willie Buford and Marion Tuck; and also permitted his unlicensed employee Adolph Korngut to practice dentistry on Wayne R. Youngblood. Subsequent to the Board's action revoking his license Dr. Fieldsmith took an appeal to the district court pursuant to Art. 4549, V.A.C.S. The court in setting aside the Board's order held that (1) the order did not have reasonable support in substantial evidence and (2) Dr. Fieldsmith was denied due process of law.

The Board's first two points on appeal are that the trial court erred in (1) substituting its discretion for the statutory discretion of an administrative agency and (2) in holding that the Board's order did not have reasonable support in substantial evidence. We agree with appellant.

[1-3] Our courts have held that an appeal to the district court under the dental statute must be tried in accordance with the substantial evidence rule. Texas State Board of Dental Examiners v. Fenlaw, Tex. Civ. App., 457 S.W. 2d 185, 187; State Board of Dental Examiners v. Fieldsmith, 242 S.W. 2d 213, 26 A.L.R. 2d 990 (ref. n.r.e.); Tamez v. State Board of Dental Examiners, Tex. Civ. App., 154 S.W. 2d 976.[1] whether there is substantial evidence to support the Board's order is a question of law. In such cases if there is substantial evidence introduced in the district court reasonably supporting the Board's order, the order must stand notwithstanding the fact that the evidence may be conflicting. The district court cannot substitute its discretion for that of Board's order is a question of law. In such cases if there is the Board. Northeast Tarrant County Water Authority v. Board of Water Engineers, Tex. Civ. App., 367 S.W. 2d 720, 726; Texas Liquor Control Board v. Warren, Tex. Civ. App., 360 S.W. 2d 821, 823; Texas State Board of Dental Examiners v. Fenlaw, Tex. Civ. App., 357 S.W. 2d 185; Vrocher v. Texas

1. On November 21, 1964 our Supreme Court in the case of Scott v. Texas State Board of Medical Examiners, 384 S.W. 2d 686 mentioned that neither the dental statute, Art. 4549, nor the pharmacy statute, Art. 4542a, Sec. 12, nor the optometry statute, Art. 4563, requires that the proceeding on appeal from the acts of said Boards revoking and cancelling licenses shall be by trial *de novo* as in the appeal from the justice court to the county court.

Liquor Control Board, Tex. Civ. App., 350 S.W. 2d 349; Texas Liquor Control Board v. Cervantes, Tex. Civ. App., 333 S.W. 2d 466; Southern Canal Co. v. State Board of Water Engineers, 159 Tex. 227, 318 S.W. 2d 619, 623-624; Board of Water Engineers v. Colorado River M.W. Dist., 152 Tex. 77, 254 S.W. 2d 369, 372; Hawkins v. Texas Co., 146 Tex. 511, 209 S.W. 2d 338; Board of Firemen's Relief, etc. v. Marks, 150 Tex. 433, 242 S.W. 2d 181.

[4] In this case the court prefaced his utterance of the judgment with this statement from the bench:

> "* * * where the Court might have denied the appeal of the Plaintiff if the action of the State Board of Dental Examiners had been a thirty or even a sixty day suspension of Dr. Hugo Fieldsmith's license, the Court was influenced in its decision and took into consideration in making its decision the fact that the State Board of Dental Examiners revoked and cancelled the license of Dr. Fieldsmith to practice dentistry in the State of Texas; * * *."

The quoted statement indicates that the court felt that the Board's order of cancellation was too severe, otherwise the order would have been sustained. To that extent the court was substituting its own discretion for that of the Board. Appellant's first point is sustained.

[5] There was substantial evidence presented in the district court in support of the Board's order. Charles McDowell testified that on various occasions Ruby Conner, an employee of Dr. Fieldsmith, put medicine in his jaw, treated the place where two teeth had been extracted, removed a piece of bone from his jaw, removed a temporary filling

from a tooth, drilled on his teeth, placed permanent fillings in his teeth, and cleaned his teeth. Willie Buford testified that Ruby Conner made impressions of his front teeth and fitted a gold crown on a tooth. Marion Tuck testified that Ruby Conner made impressions of his teeth for the purpose of constructing a fixed bridge and later adjusted the bridge to his teeth. Wayne R. Youngblood testified that Adolph Korngut, also an employee of Dr. Fieldsmith, fitted and adjusted a partial plate for him. It is undisputed that neither Ruby Connor nor Adolph Korngut has a license to practice dentistry.

Dr. Fieldsmith, Ruby Conner and Adolph Korngut contradicted the testimony of the Board's witnesses. They testified that they assisted Dr. Fieldsmith by mixing dental cement, squirting water in the patients' mouths, and building dental plates in the laboratory, but that they did not practice dentistry. A supplier of dental materials also testified that a partial plate introduced as an exhibit was not made from material sold by him to Dr. Fieldsmith.

The testimony was sharply in conflict, but there was an abundance of substantial evidence in support of the Board's order. Appellant's second point is sustained.

In its third point on appeal appellant charges that the court erred in holding that appellee was denied due process of law by appellant. The court so held because Dr. Emmett Johnson, a member of the Board, had participated in the investigation which led to the filing of the complaint against Dr. Fieldsmith.

Charles McDowell, one of the witnesses, was an employee of Texas Bank & Trust Company. He went to Dr. Fieldsmith for dental work on Dr. Johnson's recommendation. The State of Texas through Dr. Johnson advanced money to McDowell to pay for the dental work. Dr. Johnson did likewise in the case of Willie Buford, an employee of Texas Bank Building where Dr. Johnson had his office, and in the case of Marion Tuck, an employee of the Texas Bank Garage. Another witness for the State, Wayne Youngblood of Austin, Texas, an employee and investigator for the Board, was reimbursed by the State for the money expended in having dental work done by Dr. Fieldsmith.

The complaint was filed by Tom A. Garner, investigator and Assistant Executive Secretary of the Board. Garner testified that he selected and hired the men who went to Dr. Fieldsmith for dental work after Dr. Johnson had found out that they needed dental treatment. Afterward Garner, in Dr. Johnson's office, took the statements of the men as to what had happened on the occasions when they had gone to Dr. Fieldsmith. Each man had first written out his statement in his own handwriting. The statement was then typed and afterward signed and sworn to before a notary in some other office in the building. Garner, acting for the State, also advanced the money or part of it to enable the witnesses to pay for the dental work.

Article 4549 of the dental statute contemplates that complaints may be made by a member of the Board or its agents and employees, and a complaint so made shall be filed by

the Secretary and set down for hearing before the Board after notice.

Dr. Fieldsmith, though duly notified, chose not to appear at the hearing before the Board. No testimony was offered in his behalf. Testimony was offered in behalf of the State. At the conclusion of the hearing all six members of the Board, including Dr. Johnson, voted in to revoke and cancel Dr. Fieldsmith's license. Even if we were to hold (we do not so hold) that Dr. Johnson was disqualified to sit as a Board member at the hearing, we are faced with the undisputed fact that the other five members voted unanimously to revoke Dr. Fieldsmith's license.

At the hearing on appeal in the district court Dr. Fieldsmith and several other witnesses appeared and testified in his behalf. The State's witnesses withstood cross-examination.

[6, 7] It must be remembered that the Texas Board of Dental Examiners is an administrative agency. It is charged with the duty of aiding in the enforcement of the statutes regulating the practice of dentistry. To that end it is authorized to hire investigators, make complaints and to revoke a dental license for any one or more of the causes set out in the statute. The statute does not provide for disqualification of a Board member because he aided in an investigation.

We have not found a case exactly in point, but we think some light is shed on the question by the opinions in these cases: State Board of Dental Examiners v. Fenlaw, supra; Farb v. State Banking Board, Tex. Civ. App., 343 S.W. 2d

508; State Banking Board v. McCulloch, Tex. Civ. App., 316 S.W. 2d 259. Appellant's third point is sustained.

The judgment of the trial court is reversed and judgment is here rendered sustaining and affirming the action of the Board in revoking Dr. Fieldsmith's license to practice dentistry in Texas.

Reversed and rendered.

APPENDIX C

16433

TEXAS STATE BOARD OF DENTAL EXAMINERS

v.

DR. HUGO FIELDSMITH (FIELDSCHMIDT)

From District Court of Dallas County
Friday, December 18, 1964

Opinion of the Court delivered by Mr. Dixon, Chief Justice.

This cause came on to be heard on the transcript of the record, and it being the opinion of the Court that there was error in the judgment, it is therefore ordered, adjudged and decreed by the Court that the judgment of the trial court be and the same is hereby reversed and judgment is here rendered sustaining and affirming the action of the Texas State Board of Dental Examiners in revoking the license of Dr. Hugo Fieldsmith (Fieldschmidt) to practice dentistry in the State of Texas.

It is further ordered and adjudged that the appellant have and recover of and from the appellee Dr. Hugo Fieldsmith (Fieldschmidt) all costs in this behalf incurred or expended both in the trial court and on appeal for which execution may issue, and that this decision be certified below for observance.

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16433

TEXAS STATE BOARD OF DENTAL EXAMINERS

v.

DR. HUGO FIELDSMITH (FIELDSCHMIDT)

Friday, January 29, 1965

This cause came on to be heard the motion of appellee for rehearing of this cause, and the same being inspected, it is considered adjudged and ordered that the motion be overruled.